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OFFICE OF PETITIONS

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In re Application of	:	
Hochstein, et al.	:	
Application No. 09/382,702	:	ON PETITION
Filed: August 24, 1999	:	
Attorney Docket No. 9100.2881 REI	:	

This is a decision on the petition under 37 CFR 1.10(e), filed May 18, 2009, to accord a filing date of April 14, 2009 to a Notice of Appeal supplied with the petition on May 18, 2009.

The petition is **GRANTED**.

Petitioner argues that the Notice of Appeal supplied with the instant petition was originally filed on April 14, 2009. In support thereof, petitioner has included a copy of the Express Mail mailing label for Express mail number EV 376 422 293 US. The Express Mail mailing label contains a "date in" entry of April 14, 2009.

37 CFR 1.10(e) states that any person mailing correspondence addressed to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

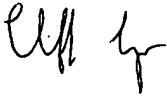
(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

Here, the petition was filed promptly. Petitioner included a copy of the Express Mail mailing label, as well a copy of the Notice of Appeal with the number of the Express Mail mailing label thereon. Petitioner also included a satisfactory statement regarding the deposit of the correspondence.

Given the basis for granting this petition, no petition fee was required, and none has been charged.

The application file is being forwarded to Group Art Unit 2838 for consideration of the Notice of Appeal, filed April 14, 2009, and the Appeal Brief, filed May 22, 2009.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.

A handwritten signature in cursive script, appearing to read "Cliff Congo".

Cliff Congo
Petitions Attorney
Office of Petitions